

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ADEMOLA ONADEIN,	:	CIVIL ACTION
Plaintiff,	:	
	:	
v.	:	
	:	
JOHN MASTERS, et al.	:	
Defendant.	:	NO. 97-CV-4136

MEMORANDUM AND ORDER

J.M. KELLY, J.

April , 1998

Presently before the Court is Defendants' Motion to Dismiss and Plaintiff's Motion for Appointment of Counsel.

BACKGROUND

Plaintiff Ademola Onadein ("Onadein") was an inmate at the Chester County Prison. The Defendants are Warden John Masters ("Masters"), Staff Sergeant Thomas Stevens ("Stevens") and Sergeants P. Sergi ("Sergi") and D. Duane ("Duane"). Onadein alleges that he was injured when a maintenance crew painted his cell block and he inhaled paint fumes. He claims that the fumes caused him to vomit, experience dizziness, headaches, stomach cramps, joint pain and problems with breathing and vision.

Onadein alleges that each of the Defendants was "aware of the incident but took no action." He also alleges that he informed Duane of his medical needs, but that he was never treated by a doctor.

LEGAL STANDARD

The purpose of a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) is to test the legal sufficiency of a complaint. See Sturm v. Clark, 835 F.2d 1009, 1011 (3d Cir. 1987). A complaint may be dismissed for failure to state a claim upon which relief may be granted if the facts pled and reasonable inferences therefrom are legally insufficient to support the relief requested. See Commonwealth ex. rel. Zimmerman v. Pepsico, Inc., 836 F.2d 173, 179 (3d Cir. 1988). In reviewing a motion to dismiss, all allegations in the complaint and all reasonable inferences that can be drawn therefrom must be accepted as true and viewed in the light most favorable to the non-moving party. See Wisniewsky v. Johns-Manville Corp., 759 F.2d 271 (3d Cir. 1985).

DISCUSSION

Onadein's complaint attempts to state claims for: (1) inhumane conditions of confinement, in violation of the Eighth Amendment; (2) deliberate indifference to serious medical needs, in violation of the Eighth Amendment; and (3) punishment without due process of law, in violation of the Fourteenth Amendment. Onadein is suing the Defendants in their individual and official capacities.

I. Conditions of Confinement

The Eighth Amendment requires that prison officials provide humane conditions of confinement and "take reasonable measures to guarantee the safety of inmates." Farmer v. Brennan, 511 U.S. 825, 832 (1994). In a case challenging conditions of confinement, the prisoner must prove a prison official's act or omission resulted in denial of "the minimal civilized measure of life's necessities." Rhodes v. Chapman, 452 U.S. 337, 347 (1981). A court should only interfere when prison conditions fall below "evolving standards of decency that mark the progress of a maturing society." Id. at 346; see also Helling v. McKinney, 509 U.S. 25, 33-34 (1993)(describing situations where objective component of Eighth Amendment claim was satisfied); Young v. Quinlan, 960 F.2d 351 (3d Cir. 1992) (inmate who was subjected to physical and sexual abuse and unsanitary conditions satisfied objective element of conditions of confinement claim). The one-time occurrence of noxious fumes alleged by Onadein is not sufficiently serious to state an Eighth Amendment claim.

II. Medical Maltreatment

"[D]eliberate indifference to serious medical needs of prisoners constitutes the 'unnecessary and wanton infliction of pain' . . . proscribed by the Eighth Amendment." Estelle v. Gamble, 429 U.S. 97, 104 (1976). Mere negligence, however, is not a constitutional violation. To prove a constitutional violation, a prisoner must prove: (1) deliberate indifference by

a prison official; and (2) serious medical need. West v. Keve, 571 F.2d 158, 161 (3d Cir. 1978).

In Farmer v. Brennan, 511 U.S. 825 (1994), the Supreme Court clarified the mental state that must be proven in a deliberate indifference case. "[A] prison official cannot be found liable under the Eighth Amendment . . . unless the official knows of and disregards an excessive risk to inmate health or safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference." Id. at 837. The term "describes a state of mind more blameworthy than negligence." Id. at 835. Deliberate indifference to serious medical needs may be manifested "by prison guards in intentionally denying or delaying access to medical care." Estelle, 429 U.S. at 104-05.

Aside from conclusory statements that all of the Defendants were deliberately indifferent, the complaint does not allege that Master, Stevens, and Sergi were personally aware of Onadein's need for medical attention. Onadein alleges that Duane was aware of his needs, but he does not allege that Duane was indifferent to those needs. The complaint states that Duane "called medical" on Onadein's behalf about one hour after the painting started.

In addition, the Eighth Amendment only requires that prison officials address serious medical needs. "The seriousness of an inmate's medical need may . . . be determined by reference

to the effect of denying the particular treatment;" e.g., the suffering of a "lifelong handicap or permanent loss." Monmouth County Correctional Inst. Inmates v. Lanzaro, 834 F.2d 326, 347 (3d Cir. 1987)(citing Pace v. Fauver, 479 F. Supp. 456, 458 (D.N.J. 1979), aff'd, 649 F.2d 860 (3d Cir. 1981)). Onadein does not allege any ongoing physical problems. Onadein suffered temporary discomfort while his cell block was being painted.

III. Punishment Without Due Process

Onadein claims that by painting his cellblock, the Defendants subjected him to punishment without due process of law. He does not, however, allege any facts to support the conclusion that the Defendants acted deliberately. At most, the facts would support a negligence claim, and negligence by government officials does not implicate the Fourteenth Amendment. Daniel v. Williams, 474 U.S. 327, 333 (1985).

IV. Appointment of Counsel

On a motion for appointment of counsel under 28 U.S.C. § 1915(d), the threshold issue is whether the Plaintiff's claim has some merit in fact and law. See Tabron v. Grace, 6 F.3d 147 (3d Cir. 1993). Onadein's complaint fails to state a claim upon which relief may be granted. Accordingly, his request for appointment of counsel is denied.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ADEMOLA ONADEIN,	:	CIVIL ACTION
Plaintiff,	:	
	:	
v.	:	
	:	
JOHN MASTERS, et al.	:	
Defendant.	:	NO. 97-CV-4136

ORDER

AND NOW, this Day of April, 1998, upon
consideration of Defendants Masters, Stevens, Sergi and Duane's
Motion to Dismiss Plaintiff's Complaint Pursuant to Fed. R. Civ.
P. 12(b)(6), and Plaintiff's Motion for Appointment of Counsel,
it is ordered that:

1. Defendants Masters, Stevens, Sergi and Duane's
Motion to Dismiss is GRANTED;
2. Plaintiff's Motion for Appointment of Counsel is
DENIED.

BY THE COURT:

JAMES MCGIRR KELLY, J.